

### REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on December 29, 2006, and the references cited therewith. Claims 1-2, 4, 7-8, 10, 12-13, 15, 17-21, 24-26, and 28-37 have been amended, claims 3, 5-6, 14, and 16 have been canceled, and claims 38-40 have been added; as a result, claims 1-2, 4, 7-13, 15, and 17-40 remain pending in this Application.

Claim 1 has been amended to delete the portion of the preamble which recited, “for updating network appliances”. Claim 1 has been further amended to change, “receiving a reply to the UUN from at least one of the network appliances; and providing the urgent update to the at least one of the network appliances in response to the reply” to, “receiving a request for the urgent update from the at least one network appliance, the request for the urgent update being sent by the at least one network appliance in response to receiving the UUN; and providing the urgent update to the at least one network appliance in response to receiving the request for the urgent update”. This amendment finds support, for example, on page 8, lines 17-19 of the specification.

Claim 2 has been amended to conform to amendments made to claim 1.

Claim 4 has been amended to change, “SMTP” to, “Simple Mail Transfer Protocol (SMTP)”, and to depend on claim 2 instead of cancelled claim 3.

Claim 7 has been amended to change, “enabling the network appliances to obtain a log that includes the urgent update” to, “providing a log that includes the urgent update to the network appliances”.

Claim 12 has been amended to change, “operable on”, to “performed by”.

Claim 13 has been amended to delete the portion of the preamble which recited, “for obtaining updates”. Claim 13 has also been amended to recite, “determining that the message includes an urgent update notification (UUN)”, and make the following line conform to the establishment of antecedent basis.

Claim 15 has been amended to change, “SMTP” to, “Simple Mail Transfer Protocol (SMTP)”.

Claims 17-19 have been amended to depend on independent claim 13 instead of cancelled claim 16, and to provide antecedent basis for “special format” in claim 17.

Claim 20 has been amended to change, “operable to” to “performed by”, and to depend on claim 13 instead of claim 1.

Claim 21 has been amended to delete the portion of the preamble which recited, “for managing a network”.

Claim 24 has been amended to change, “enable the network appliances to connect to the update server and to obtain updates” to, “connect to the network appliances and provide updates to the network appliances”.

Claim 25 has been amended to change, “for updates” to “to receive or check for updates”. This amendment finds support, for example on page 5, lines 15-17 of the specification.

Claim 28 has been amended for clarity.

Claim 29 has been amended to delete the portion of the preamble which recited, “for providing updates to network appliances”. Claim 29 has also been amended to recite “urgent update notification (UUN)”. Claim 29 has also been amended to replace “reply to the UUN” with “request for the urgent update”. Support for this amendment may be found, for example, on page 8, lines 7-9.

Claim 30 has been amended to delete the portion of the preamble which recited, “for obtaining updates”. Claim 30 has also been amended to change, “UUN” to “urgent update notification (UUN)”.

Claim 31 has been amended to change, “wherein the central processing unit and the at least one data storage are configured to enable the network appliance to”, to “wherein the network appliance, in conjunction with the central processing unit and the at least one data storage, is configured to”. Claim 31 has also been amended to recite that the message is received from a server, and to change “a server” to “the server” after antecedent basis has been established for the server. Claim 31 has also been amended to change, “UUN” to “urgent update notification (UUN)”.

Claim 32 has been amended to change, “the central processing unit and the at least one data storage are configured to enable the network appliance” to “the network appliance, in conjunction with the central processing unit and the at least one data storage, is configured to”. Claim 32 has also been amended to change, “for execution by” to, “configured to execute on”.

Claim 35 has been amended to change, “wherein the central processing unit and the at least one data storage are configured to enable the update server to” to “wherein the update server, in conjunction with the central processing unit and the at least one data storage, is configured to”. Claim 35 has also been amended to change, “UUN” to “urgent update notification (UUN)”. Claim 35 has also been amended to replace “reply to the UUN” with “request for the urgent update”. Support for this amendment may be found, for example, on page 8, lines 7-9.

Claim 36 has been amended to change, “the central processing unit and the at least one data storage are configured to enable the update server to” to, “the update server, in conjunction with the central processing unit and the at least one data storage, is configured to”.

Claim 37 has been amended to change, “for execution by” to, “configured to execute on”.

Other amendments to the claims have been made to correct informalities.

Newly added dependent Claim 38 recites, “wherein the at least one network appliance is configured to detect and remove exploits from messages.” This claim finds support, for example, on page 5, lines 26-28 of the specification.

Newly added independent Claim 39 includes the limitations of amended claim 1, and also recites, “obtaining updates for at least one network appliance; recording a plurality of the updates in an update log; receiving an update request from the at least one network appliance; providing the updates recorded in the update log to the at least one network appliance in response to the receiving the update request”. This recitation finds support, for example, on page 7, lines 1-16 of the specification.

Newly added independent Claim 40 includes the limitations of amended claim 13, and also recites, “periodically sending update requests to a server; obtaining updates from the server, the updates being stored in an update log of the server and being provided by the server in response to the server receiving the update requests”. This recitation finds support, for example, on page 7, lines 15-16, and page 8, lines 5-13 of the specification.

### **§ 101 REJECTIONS**

Independent claims 1, 13, and 21, and their dependent claims 2-12, 14-20, and 22-28, were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully submits that this rejection was improper because these claims do recite statutory subject matter.

Claim 1 recites a method which includes sending to and receiving from a network device. The Office Action dated December 29, 2006, rejected claim 1 based on In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994), on the ground that claim 1 recited functional descriptive material that is not recorded on a medium. Applicant respectfully submits that this rejection was improper because Lowry is inapplicable to claim 1.

The claims that were rejected as non-statutory subject matter in Lowry recited an apparatus claim: “[a] memory for storing data for access by an application program being executed on a data processing system, comprising...” Id., 32 F.3d 1581-82, 32 USPQ2d 1033-34. Claim 1 recites a method. Therefore, Lowry is inapplicable to claim 1, and Applicant respectfully requests that this rejection be withdrawn.

Claim 13 recites a method including sending to and receiving from a server. The Office Action rejected claim 13 based on Lowry, on the ground that claim 13 recited functional descriptive material that is not recorded on a medium. Applicant respectfully submits that this rejection was improper because Lowry addresses the patentability of computer-related apparatus claims, and claim 13 recites a method.

Claim 21 recites a system comprising an update server and a network appliance. The Office Action rejected claim 21 based on Lowry, on the ground that claim 21 recited functional descriptive material that is not recorded on a medium. Applicant respectfully submits that this rejection was improper because Lowry holds that structural limitations recite patentable subject matter.

In Lowry, the Federal Circuit held that structures with novel, nonobvious functional relationships constitute patentable subject matter. Claim 21 recites functional relationships between the update server and the network appliance, such as the update server “send[ing] an urgent update notification...to each network appliance”, and the network appliance “obtain[ing]

updates from the update server". Therefore, claim 21 recites patentable subject matter under Lowry, and Applicant respectfully requests that this rejection be withdrawn.

Claims 2-12, 14-20, and 22-28 were rejected under 35 U.S.C. § 101 due to their dependence on rejected independent claims 1, 13, and 21, respectively. Applicant submits that claims 2, 4, 7-12, 15, 17-20, and 22-28 recite patentable subject matter due to their dependence on independent claims 1, 13, and 21, respectively, and respectfully requests that these rejections be withdrawn. Applicant further requests withdrawal of the rejections of claims 3, 5-6, 14, and 16 due to the cancellation of these claims.

### **§ 112 REJECTIONS**

Claims 1-12, 29, and 35-37 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully submit that the rejections based on reciting “creating an urgent update notification” were improper, and that the rejections based on reciting “receiving a reply” are obviated by amendments made herein.

Claim 1 recites “creating an urgent update notification”. The Office Action dated December 29, 2006, rejected claim 1 on the ground that it was unclear who, what, or where the urgent update notification was created. Applicant respectfully submits that this rejection was improper because it is not necessary to recite the structure which performs the process of a process claim:

Process or method claims are not subject to rejection by U.S. Patent and Trademark Office examiners under 35 U.S.C. 112, second paragraph, solely on the ground that they define the inherent function of a disclosed machine or apparatus. *In re Tarczy-Hornoch*, 397 F.2d 856, 158 USPQ 141 (CCPA 1968). The court *Tarczy-Hornoch* held that a process claim, otherwise patentable, should not be rejected merely because the application of which it is part discloses apparatus which will inherently carry out the recited steps.

MPEP § 2173.05(v). Therefore, Applicant respectfully requests that this rejection be withdrawn.

Claim 29 recites an apparatus comprising “means for creating an urgent update notification”. The Office Action rejected claim 29 on the ground that it was unclear who, what, or where the urgent update notification was created. Applicant respectfully submits that claim 29 does make clear that it is the “means for creating an urgent update notification” which creates the urgent update notification. Therefore, Applicant respectfully requests that this rejection of claim 29 be withdrawn.

Claim 35 recites an update server which is configured to create an urgent update notification. The Office Action rejected claim 35 on the ground that it was unclear who, what, or where the urgent update notification was created. Applicant respectfully submits that claim 35 does make clear that it is the update server which creates the urgent update notification. Therefore, Applicant respectfully requests that this rejection of claim 29 be withdrawn.

Claims 1, 29, and 35 were also rejected on the ground that the recitation of “receiving a reply” was unclear. These claims have been amended to replace “receiving a reply” with

“receiving a request for the urgent update”. Applicant respectfully submits that these amendments obviate these rejections, and respectfully request that these rejections be withdrawn.

Claims 2-12 and 36-37 were rejected due to their dependence on rejected independent claims. Applicant respectfully submits that due to the allowability of the independent claims, discussed above, these dependent claims 2, 4, 7-12, and 36-37 should also be allowable, and respectfully requests that the rejections of these claims be withdrawn. Applicant further requests that the rejections of claims 3 and 5-6 be withdrawn due to the cancellation of these claims.

### **CLAIM OBJECTIONS**

Claims 1-37 were objected to due to informalities. Applicant appreciates the Examiner's courtesy in noting these informalities, and respectfully submits that amendments and cancellations obviate these claim objections.

Claims 1, 13, 29, and 30 were objected to based on "intended use" claim language in their respective preambles. The objected to language in the respective preambles has been deleted. Therefore, Applicant respectfully requests that these objections be withdrawn.

Claims 7, 24, 12, 20, 25, 31-32, and 36-37 were objected to based on "intended use" claim language in the limitations. The objected to language in these respective claims has been deleted. Therefore, Applicant respectfully requests that these objections be withdrawn.

Claims 3, 5, 14, and 16 were objected to on the basis that the "specific format" recitations were vague and indefinite. These claims have been canceled. Therefore, Applicant respectfully requests that these objections be withdrawn.

Claim 4 and 15 were objected to on the basis that the abbreviation, "SMTP" needed to be spelled out. In both of these claims, "SMTP" has been changed to "Simple Mail Transfer Protocol", which should satisfy the objection. Therefore, Applicant respectfully requests that these objections be withdrawn.

Claims 13, 29, 30, 31, and 35 were objected to on the basis that the abbreviation, "UUN" needed to be spelled out. In each of these claims, "UUN" has been changed to, "urgent update notification". Therefore, Applicant respectfully requests that these objections be withdrawn.



### **§ 102 REJECTIONS**

The Office Action dated December 29, 2006, rejected claims 1-7, 12-18, 20-21, 23, 28-31, 34-35, and 37 under 35 U.S.C. § 102(c) as being anticipated by Seshadri et al., U.S. Patent Pub. No. 2004/0002958. Applicant respectfully submits that the pending claims, as amended, are not anticipated by Seshadri, and respectfully requests that these rejections be withdrawn.

Claim 1, as amended, recites, “sending the UUN to the at least one network appliance; receiving a request for the urgent update from the at least one network appliance, the request for the urgent update being sent by the at least one network appliance in response to receiving the UUN; and providing the urgent update to the at least one of the network appliances in response to receiving the request for the urgent update.” This Office Action rejected claim 1 as being anticipated by Seshadri on the ground that these limitations were disclosed in the abstract and paragraphs [0077-78], [0093], [0118-19], [0446], and [0604]. Applicant respectfully disagrees with this rejection.

The abstract discloses a “notification system”. Paragraphs [0077-78] disclose an “event provider 304 [which] may wait for information to be ‘pushed’ or sent to it, or it can ‘pull’ information from a source by polling the source and gathering any new or updated data.” Paragraph [0093] discloses a “distributor 802 [which] sends notification(s) by way of a delivery protocol 806”. Paragraphs [0118-19] disclose parameterizing subscriptions. Paragraph [0446] discloses automatically prioritizing messages or other notifications, and redirecting a message “to a most likely communications device currently at the disposal of the user”. Paragraph [0604] discloses “[p]ush-type sources [which] automatically generate and send information without a corresponding request,” and “[p]ull-type sources [which] send information in response to a request”. These paragraphs do not disclose sending a notification, receiving a request sent in response to the notification, and providing an update in response to receiving the request. For example, these paragraphs do not disclose actually providing an update beyond sending the notification. Therefore, the Office Action has not shown that claim 1 is anticipated by Seshadri, and Applicant respectfully requests that this rejection be withdrawn.

Claims 29 and 35 should be allowable at least for the same reasons as claim 1, and Applicant respectfully requests that the rejections of claims 29 and 35 be withdrawn.

Claim 13, as amended, recites, “receiving a message from a server; determining that the message includes an urgent update notification (UUN); in response to the determining that the message includes the UUN, establishing a connection with a server; pulling the urgent update from the server; and installing the urgent update.” The Office Action rejected claim 1 as being anticipated by Seshadri on the ground that these limitations were disclosed in the abstract and paragraphs [0006], [0069], [0077-78], [0118-19], [0142], [0406], [0446], [0604], and [0680]. Applicant respectfully disagrees with this rejection.

The abstract discloses a notification system. Paragraph [0006] discloses “a system and methodology for providing a notification system.” Paragraph [0069] discloses treating individual subscriptions as parameter data to evaluate large numbers of subscriptions. Paragraphs [0077-78] disclose an “event provider 304 [which] may wait for information to be ‘pushed’ or sent to it, or it can ‘pull’ information from a source by polling the source and gathering any new or updated data.” Paragraphs [0118-19] disclose parameterizing subscriptions. Paragraph [0142] discloses “a subscription management application that allows users to subscribe to the service and receive notifications.” Paragraph [0406] discloses a “subscription management application 1520 [which] updates subscriber information by invoking a notification services API 1540.” Paragraph [0446] discloses automatically prioritizing messages or other notifications, and redirecting a message “to a most likely communications device currently at the disposal of the user”. Paragraph [0604] discloses “[p]ush-type sources [which] automatically generate and send information without a corresponding request,” and “[p]ull-type sources [which] send information in response to a request”. Paragraph [0680] discloses elements of a computer. These paragraphs do not disclose establishing a connection with a server and pulling and installing an urgent update in response to determining that a message received from the server includes an urgent update notification, as recited in claim 13. Therefore, Applicant respectfully requests that the rejection of claim 13 be withdrawn.

Claims 30 and 31 should be allowable at least for the same reasons as claim 13, and Applicant respectfully requests that the rejections of claims 30 and 31 be withdrawn.

Claim 21 recites, “a network appliance configured to periodically obtain updates from the update server”. The Office Action rejected claim 13 as being anticipated by Seshadri, and cited paragraphs [0093], [0678], and [0682] as disclosing the quoted limitation. These paragraphs do

not disclose the quoted limitation: paragraph [0093] discloses “[t]he distributor 802 then sends notification(s) by way of a delivery protocol 806 to a delivery service,” but does not disclose notifications being sent periodically, and paragraphs [0678] and [0682] do not disclose obtaining updates. Therefore, Seshadri does not disclose all of the limitations of claim 21, and Applicant respectfully requests that this rejection be withdrawn.

Claims 2, 4, 7, 12, 15, 17-18, 20, 28, 18, 34, and 37 were also rejected as being anticipated by Seshadri. Applicant respectfully submits that these claims should be allowable at least due to their dependence on allowable independent claims. Therefore, Applicant respectfully requests that these rejections be withdrawn.

Claims 3, 5-6, 14, and 16 were also rejected as being anticipated by Seshadri. These claims have been canceled, making these rejections moot. Therefore, Applicant respectfully requests that these rejections be withdrawn.

Newly added claim 38, which depends on claim 1, recites, “wherein the at least one network appliance is configured to detect and remove exploits from messages.” Applicant respectfully requests that this claim be allowed on the grounds that it is dependent upon an allowable independent claim, and because the limitation of claim 38 is not disclosed or suggested by Seshadri.

Newly added claim 39, in addition to reciting the limitations of amended claim 1, recites, “obtaining updates for at least one network appliance; recording a plurality of the updates in an update log; receiving an update request from the at least one network appliance; providing the updates recorded in the update log to the at least one network appliance in response to the receiving the update request”. These limitations are not disclosed or suggested by Seshadri. Therefore, Applicant respectfully requests that claim 39 be allowed.

Newly added claim 40, in addition to reciting the limitations of amended claim 13, recites, “periodically sending update requests to a server; obtaining updates from the server, the updates being stored in an update log of the server and being provided by the server in response to the server receiving the update requests”. These limitations are not disclosed or suggested by Seshadri. Therefore, Applicant respectfully requests that claim 40 be allowed.

### **§ 103 REJECTIONS**

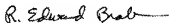
The Office Action dated December 29, 2007, rejected dependent claims 8-11, 19, 22, 24-27, 32-33, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Seshadri in view of Lewis et al., U.S. Patent Pub. No. 2004/0116119. Applicant submits that Lewis fails to make up for the deficiencies of Seshadri in failing to disclose the limitations of the independent claims upon which these claims depend. Therefore, Applicant respectfully submits that claims 8-11, 19, 22, 24-27, 32-33, and 36 should be allowable at least due to their dependence on allowable independent claims, and respectfully requests that these rejections be withdrawn.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (202-470-6451) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3521 and reference our docket number 0051-007001.

Respectfully submitted,  
Brake Hughes Bellermann LLP  
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202-470-6451



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April 30, 2007

Date

REB/cjj